

is created in the city treasury a special fund to be known as the "special gas tax street improvement fund."

(Code 1961, § 2.61)

Sec. 22-59. Moneys to be paid into fund.

All moneys received by the city from the state under the provisions of the Streets and Highways Code for the acquisition of real property or interests therein for, or the construction, maintenance or improvement of streets or highways, other than state highways, shall be paid into the fund. (Code 1961, § 2.62)

Sec. 22-60. Expenditures of moneys in fund.

All moneys in the fund created by this article shall be expended exclusively for the purposes authorized by, and subject to all of the provisions of the Streets and Highways Code. (Code 1961, § 2.63)

ARTICLE V. CONSTRUCTION OF CURBS AND GUTTERS*

Sec. 22-61. Scope of this article; definitions.

(a) This article shall not apply to construction of curbs and gutters for new building construction and development or to maintenance of existing curbs and gutters.

(b) *Block* means property facing one (1) side of any street between the next intersecting streets or between the terminus of a dedicated right-of-way of a street and an intersecting street. *Street* does not include an alley or other right-of-way unless it is of the same width as a regular residential minimum width street. In the case of an alley, *block* means property facing both sides of any alley between the next intersecting streets or alleys, or between the terminus of an alley and an intersecting street.

***Editor's note**—Section 1 of Ord. No. 909, adopted September 24, 1996, added §§ 22-60—22-79 to be included in this Code. To keep from duplicating section numbers, said sections have been renumbered as §§ 22-61—22-80 as herein set out.

(c) *Cost* and *construction cost* or variants thereof, means and includes both the actual cost of construction of the work, design and inspection and incidental expenses, as defined in this article. (Ord. No. 909, § 1, 9-24-96)

Sec. 22-62. Duty to construct.

A duty to construct or cause the construction of curbs and gutters in front of their properties shall arise:

(a) When the director of public works or his/her designee finds that curbs and gutters have been constructed, or that their construction has been guaranteed to his satisfaction, in front of properties constituting more than fifty (50) percent of the frontage in any block; or

(b) Where a petition signed by the owners of more than sixty (60) percent of the front footage of the block has been filed with the city clerk requesting the installation of such improvements; or

(c) Whenever the city council of the city upon its own motion has ordered the installation of such improvements. (Ord. No. 909, § 1, 9-24-96)

Sec. 22-63. Notice to construct.

(a) The director of public works or his/her designee shall, upon the instructions of the city council, notify the owner or person in possession of the property fronting on that portion of the street in such block in which no curbs and gutters have been constructed theretofore, to construct or cause to be constructed curbs and gutters in front of his or her property. The city shall also notify the owner or person in possession that he/she shall be entitled to a fifty (50) percent cost reimbursement, based on city cost estimates, if the work is part of a city-sponsored project undertaken at the council's direction. No reimbursement shall be paid if the work is undertaken pursuant to an owner initiated petition to the city.

(b) Notice to construct may be given by delivering a written notice personally to the owner or to the person in possession of the property facing upon the curbs and gutters to be constructed or by mailing a postal card, postage prepaid, to the

person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the person owning such property as shown in the records of the office of the city clerk.

(c) The postal card shall contain a notice to construct the curbs and gutters as the case may be, and the director of public works or his/her designee shall, immediately upon the mailing of the notice, cause a copy thereof, to be posted in a conspicuous place on the property.

(d) The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the construction and shall further specify that if the construction is not commenced within sixty (60) days after notice is given and diligently and without interruption prosecuted to completion within thirty (30) days of commencement, the director of public works or his/her designee shall cause the construction to be done. However, upon petition by all of the affected property owners, the sixty (60) day period may be waived and the director of public works or his/her designee may immediately cause the construction to be done.
(Ord. No. 909, § 1, 9-24-96)

Sec. 22-64. Construction by city.

If the construction is not commenced within sixty (60) days and prosecuted to completion with due diligence within thirty (30) days thereafter, as required by the notice or by the city council after the hearing required by this article, the city shall forthwith construct the curbs and gutters.
(Ord. No. 909, § 1, 9-24-96)

Sec. 22-65. Time and place of hearing on objections or protests.

The notice shall also specify the day, hour, and place when the city council will hear and pass upon objections or protests, if any, which may be raised by any property owner or other interested persons, but in no case shall the hearing be sooner than ten (10) days after giving notice. Upon the

day and hour fixed for the hearing, the city council shall hear and pass upon objections or protests in accordance with this article.
(Ord. No. 909, § 1, 9-24-96)

Sec. 22-66. Protests.

At any time not later than the hour set for hearing objections to the proposed work, any owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent of the district to be assessed, or against any agreement entered into pursuant to this article. Such protest must be in writing, must contain a description of the property in which each signer thereof is interested, sufficient to identify the same and, if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. All such protests shall be delivered to the clerk, and no other protests or objections shall be considered.
(Ord. No. 909, § 1, 9-24-96)

Sec. 22-67. Hearing; adjournment; withdrawal of protest.

At the time set for hearing protests the city council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The city council may adjourn the hearings from time to time. Any such protest may be withdrawn by the owner making the same, in writing, at any time prior to the conclusion of said protest hearing or any such adjournment thereof.
(Ord. No. 909, § 1, 9-24-96)

Sec. 22-68. Continuation of hearing; referral of protests; report and recommendation of director of public works or his/her designee; action by city council.

In lieu of hearing and passing upon protests, the city council may continue the hearing of protests to a day certain and refer the protests to the director of public works or his/her designee for investigation, report and recommendation as to the improvement and matters included in the

protests. The report and recommendation of the director of public works or his/her designee shall be in writing, and a copy thereof shall be mailed not less than five (5) days prior to the continued hearing date for protests to each person owning property liable to be assessed who has made a written protest. At the time set for the continued hearing the city council shall hear and pass upon the report and recommendation of the director of public works or his/her designee and its decision shall be final. The city council may adjourn the hearing from time to time. Protests may be withdrawn in writing signed by the owner.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-69. Majority protest; overruling protest; finality of determination.

If the protest is against the proposed work and the city council finds that the protest is made by the owners of more than fifty (50) percent of the property to be assessed for the improvements, and protests are not withdrawn so as to reduce the same to less than a majority, no further proceedings shall be taken for a period of one (1) year from the date of the decision of the city council on the hearing, unless the protests are overruled by an affirmative vote of four-fifths of the members of the city council finding that the public health and safety require that the improvements be made. The determination of the city council shall be final and conclusive.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-70. Determination of ownership.

If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protest are the owners of the property to be assessed, the city council shall make such determination from the last equalized assessment roll, any written evidence submitted with a written protest and any other evidence received at the hearing. The city council shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be final and conclusive.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-71. Jurisdiction to order work done.

If no protests or objections in writing have been delivered to the clerk up to the hour set for the hearing thereon or if protests have been found by the city council to be insufficient, or have been overruled, or if protests against the extent of the proposed district have been heard and denied, immediately thereupon the city council shall acquire jurisdiction to order the proposed work to be done.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-72. Report following completion of construction; contents.

Upon the completion of the construction, the director of public works or his/her designee shall prepare and file with the city council a report specifying the work which has been done, the cost of construction, a description of the real property in front of which the work has been done and the assessment against each lot or parcel of land proposed to be levied to pay the cost or portion thereof. The report may include work done in front of any number of parcels of property, whether contiguous to each other or not. In determining the amount of the assessment against each lot or parcel of land, the superintendent shall assess the same portion of the total cost of the work against each lot or parcel as that parcel will receive of the total benefit from the work.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-73. Notice of cost; service; contents; time for hearing.

(a) Upon the completion of the construction, the city shall cause notice of the cost of the construction to be given in the manner specified in this article for the giving of notice to construct, which notice shall specify the day, hour and place when the city council will hear and pass upon a report by the director of public works or his/her designee of the cost of the construction, together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such construction and any other interested persons. In no case shall the hearing provided for in this section be sooner than ten (10) days after giving of notice.

(b) The cost of the construction may include a proportionate share, as determined by the city council, of the cost of improvements constructed in a place other than in front of a parcel of property which are required for the proper functioning of the improvements in front of the parcel. (Ord. No. 909, § 1, 9-24-96)

Sec. 22-74. Hearing on report; confirmation; finality of decision.

Upon the day and hour fixed for the hearing the city council shall hear and pass upon the report of the director of public works or his/her designee, together with any objections or protests which may be raised by any of the property owners liable to be assessed for such construction and any other interested persons. Thereupon the city council may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The city council may adjourn the hearings from time to time. The decisions of the city council on all protests and objections which may be made, shall be final and conclusive. (Ord. No. 909, § 1, 9-24-96)

Sec. 22-75. Assessment of cost; lien.

The assessments proposed by the director of public works or his/her designee pursuant to this article, as may be amended by the city council during the hearing held pursuant to this article, may be confirmed and levied by the city council against the parcels of property front upon the curbs and gutters so constructed, and the cost so assessed, if not paid within thirty (30) days after its confirmation by the city council, shall constitute a special assessment against each of those parcels, and shall be a lien on the property for the amount thereof from the time of recordation of the notice of lien, which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record. (Ord. No. 909, § 1, 9-24-96)

Sec. 22-76. Notice of lien; form; filing.

The director of public works or his/her designee may file in the office of the county recorder of the

county in which the parcel of property is located, a certificate substantially in the following form, to wit:

Notice of Lien

Pursuant to the authority vested in me by Belmont Municipal Code Chapter 22, Article V, on the _____ day of _____, 19_____, curb and gutter work was completed and the City Council of said City did, on the _____ day of _____, 19_____, by Resolution Number _____ assess the cost of such construction upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said City, does hereby claim a lien on said real property in the sum of _____ dollars (\$_____), and the same shall be a lien upon said real property until the said sum, with interest at the rate of _____ percent (insert rate of interest as fixed by the City Council, not to exceed 7 percent) per annum, from the said _____ day of _____, 19_____ (insert date of the thirty-first day after confirmation of assessment), has been paid in full and discharged of record.

The real property hereinabove mentioned and upon which a lien is claimed, is that certain piece or parcel of land lying and being in the City of Belmont, the County of San Mateo, State of California, and particularly described as follows, to wit:

(Description of Property)

Dated this _____ day of _____, 19_____.

Director of Public Works

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-77. Effect of recording notice; consolidation of claims; statute of limitations; foreclosure of lien.

From and after the date of the recording of the notice of lien, all persons shall be deemed to have had notice of the contents thereof. The notice of lien may include claims against one (1) or more

separate parcels of property, whether contiguous or not, together with the amount due, respectively, from each such parcel. The statute of limitations shall not run against the right of the city to enforce the payment of the lien. If any such lien is not paid the city may file and maintain an action to foreclose such lien in the same manner and under the same procedure, so far as applicable, as that under which delinquent bonds are foreclosed.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-78. Alternative method of collection; inclusion of claim in next regular tax bill; notice of lien; collection.

As an alternative method of collection of the amount of the lien, the city council, after confirmation of the report of the director of public works or his/her designee, may order the notice of lien to be turned over to the accounting officer and the tax collector of the city, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land. If city taxes are collected by the county officials, the notice of lien shall be delivered to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-79. Time and manner of collection; penalties; interest; foreclosure.

Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy,

collection and enforcement of city taxes and county taxes are hereby made applicable to such special assessment taxes.

(Ord. No. 909, § 1, 9-24-96)

Sec. 22-80. Payment of assessments; annual installments; interest.

The city council shall have the power, in its discretion, to determine that the payment of such assessments of fifty dollars (\$50.00) or more may be made in annual installments, in any event not to exceed ten (10) and that the payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the city council, not to exceed seven (7) percent per annum. Said interest shall begin to run on the thirty-first day after the confirmation of the assessments by the city council. All such determinations may be expressed by resolution of the city council at any time prior to the confirmation of the assessments.

(Ord. No. 909, § 1, 9-24-96)